



14732

RECORDATION NO. \_\_\_\_\_ Filed & Recorded

JUL 8 1985 4-1 5 PM

INTERSTATE COMMERCE COMMISSION

July 2, 1985

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

No. 5-189A097  
Date JUL 8 1985  
Fee \$ 10.00  
ICC Washington, D.C.

Dear Sir:

Enclosed for recordation pursuant to the provisions of Section 11303 of Title 49 of the United States Code and the regulations thereunder are the original and one copy of Management Agreement, a primary document dated June 1, 1985.

The names and addresses of the parties to the enclosed documents are:

Manager: Northbrook Corporation  
2215 Sanders Road, Suite 370  
Northbrook, IL 60062  
Attn: President

Owner: Crocker Equipment Leasing, Inc.  
111 Sutter Street (22)  
San Francisco, CA 94104  
Attn: Commercial and Industrial Group

ICC OFFICE OF  
THE SECRETARY  
JUL 8 4 04 PM '85  
MOTOR OPERATING UNIT

A general description of the railroad equipment covered by the enclosed documents is as follows:

Seventy six (76) 100-ton gondola railroad cars bearing the reporting mark WSOR

Twenty four (24) 100-ton gondola railroad cars bearing the reporting mark TSBY

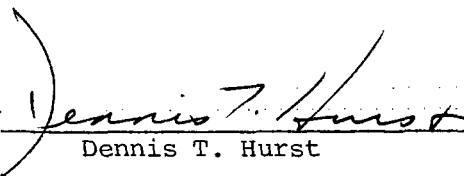
The original and all extra copies of the enclosed documents should be returned to Ms. Sharon Schumacher of Northbrook Corporation, 2215 Sanders Road, Suite 370, Northbrook, IL 60062.

Also enclosed is a remittance in the amount of \$10.00 for payment of recordation fees.

Mr. James H. Bayne  
Interstate Commerce Commission  
July 2, 1985  
Page 2

I am an officer of Northbrook Corporation and have knowledge of the matters  
set forth herein.

Very truly yours,

By   
Dennis T. Hurst

SS:pb  
encl.

SENT VIA: Certified Mail


STATE OF ILLINOIS )  
COUNTY OF COOK )

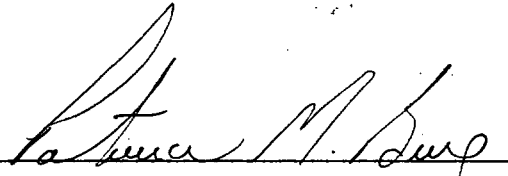
RECORDATION NO. 14732 Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

On this 2nd day of July, 1985, I hereby certify that I have compared the attached copy of Management Agreement between Northbrook Corporation and Crocker Equipment Leasing, Inc. dated June 1, 1985 with the original and have found the copy to be complete and identical in all respects to the original document.



  
Notary Public

(Seal)

My Commission Expires Nov. 5, 1988

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MANAGEMENT AGREEMENT

Dated as of June 1, 1985

Between

CROCKER EQUIPMENT LEASING, INC. (Owner)

and

NORTHBROOK CORPORATION (Manager)

## MANAGEMENT AGREEMENT

This Agreement made this 1st day of June, 1985 by and between Northbrook Corporation ("Manager"), and Crocker Equipment Leasing, Inc. ("Owner") the Owner of the railroad cars ("the Cars") identified in Exhibit A hereto:

WHEREAS, Manager is engaged in the business of managing and leasing railcars for the Manager and other railcar owners, and Owner desires to retain Manager as agent for the purpose of managing the Cars on Owner's behalf on the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and Manager, intending to be legally bound, hereby agree as follows:

1. Engagement of Manager

Subject to all of the terms and conditions set forth herein, Owner hereby engages Manager to manage the Cars, and Manager accepts such engagement and agrees to perform such duties in accordance with the terms and conditions hereof.

2. Term

- (a) The term of this Agreement ("Term") shall commence upon the date hereof and shall continue for two (2) years unless terminated sooner in accordance with the provisions of this Agreement.
- (b) This Agreement shall terminate with respect to any Car which is withdrawn from the terms of this Agreement in accordance with Section 2(c) or Section 2(d) hereof, or terminated pursuant to Section 9 hereof, lost or totally destroyed, ("Termination") as of the date of such Termination provided, further, however, that notwithstanding any Termination of this Agreement with respect to any Car, Manager shall be obligated to collect all rental payments, mileage allowances and other sums (including insurance benefits, and lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of Cars), and to arrange for payment of all expenses, taxes and other charges with respect to any Car, due or with respect to periods prior to such termination of this Agreement. (Such expenses and charges to be reimbursed by Owner.)
- (c) After the first six months this Agreement is in force, if the net revenue on the Cars fall below an average of \$400 per car per month for 3 consecutive months, the Owner may, upon 10 day notice to the Manager, terminate this Agreement as to any or all of the Cars. For purposes of this Section (c), net revenue equals Gross Revenue minus per diem reclaims but excluding any penalty reclaim or double reclaim charges. Owner has 60 days to terminate or loses the right to do so.

Gross Revenue means income from any per diem, mileage, rent, or lease payments. ("Gross Revenue")

- 9 WSJ (B32)  
90 days from termination notice,
- (d) This Agreement shall terminate ~~on December 31, 1985~~ provided that Owner notifies Manager of such termination on or before October 31, 1985. Notwithstanding Owner's notification to Manager, all Cars remain subject to Section 11(h) of this Agreement.

3. Procurement of Assignments and Operating Leases; Right of Substitution

- (a) Manager will use its best efforts to seek to procure short term assignments and operating leases for each Car. No fixed term and fixed payment assignment may be entered into by the Manager unless such is preapproved in writing by Owner. (Free running service is the only service not considered fixed term or fixed payment).
- (b) During the term of this Agreement, upon sixty (60) days prior written notice to Manager and at the expense of Owner, Owner has the right to substitute any or all of the Cars with another car of the same age, type, capacity and condition, provided that such substitution is permissible under the terms of the assignment, lease or other user agreement pursuant to which such Cars are operating and such substitution shall not interfere with any assignment or current operating leases. In the event of such substitution, the substituted car shall be accepted by Manager pursuant to all the terms and conditions of this Agreement.

4. Duties of Manager

In consideration of the compensation to be paid to Manager pursuant to this Agreement, Manager shall provide and perform on behalf of Owner the services set forth below, which services shall be provided and performed during the term of this Agreement at a level or standard of care no less than Manager would use with respect to cars it owns or leases or manages for others. The Manager will:

- (a) Arrange for payment for the maintenance and repair of each Car. All such payments are to be reimbursed to Manager first from any receipts or earnings on the Cars and next from Owner to the extent cash collections are insufficient.

Manager shall review, approve, or, if invoice is not both reasonable and proper, reject, and audit each and every such invoice. All such repair and maintenance shall be accomplished promptly and shall be inspected by Manager when appropriate so as to determine the necessity and quality of such repair and maintenance. Manager shall keep each Car in good order and repair and shall comply with each required safety appliance and construction obligation specified by the Association of American Railroads and the Interstate Commerce Commission. The Manager shall maintain each Car in a condition that is satisfactory for interchange in accordance with the Association of American Railroads rules, all at Owner's cost and expense unless a lessee is held responsible for same. All maintenance and repair shall be accomplished in accordance with the Association of American Railroads, Interstate Commerce Commission and Federal Railway Association rules and regulations.

- (b) Register the Cars and file or have filed all required initial and ongoing reports with the Association of American Railroads ("AAR"), Interstate Commerce Commission ("ICC"), Department of Transportation ("DOT"), Universal Machine Language Equipment Register ("UMLER"), and each other regulatory authority having jurisdiction over the Cars in order to insure that the Cars will at all times be entitled to generate the maximum revenues.
- (c) Use its best efforts to collect from any user, assignee and/or lessees all payments, mileage allowances and any other revenue due and which are not duly and promptly paid to the Manager or the Owner with respect to the Cars and any other sums due to Owner with respect to the Cars, identifying itself as agent for that purpose, and account for and remit those sums due to Owner as hereinafter provided.
- (d) Maintain the Cars at Owner's expense in a condition which shall be equal to or greater than the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, ICC or DOT, or any other regulatory authority having jurisdiction over the Cars, (ii) any standard set by the terms of any operating leases and (iii) any standard set by an insurance policy known to Manager, under which the Cars or any of them shall from time to time be insured. Except as otherwise provided herein, Manager will, at Owner's expense, arrange for all alterations, modifications, improvements or additions to the Cars to comply with all applicable laws or regulations. For any non-running repairs under Sections 107 or 108 of the AAR rules, or for any alterations required by the AAR, Owner has right of pre-approval if the anticipated cost is greater than \$500 per car for any car. Owner will have five (5) business days after written notification to make this election. If Owner makes no election within this time, Manager will use its best judgment.
- (e) Use its best efforts to cause each car in need of repair to be transported to the repair facility by Manager at minimum cost to Owner ("Repair Transport"). Manager will rely on its review of the overall costs of movement and repair to minimize the total costs and to insure that, taking into consideration the likely utilization of the Cars in revenue service, uneconomical repairs are not made.
- (f) Pay on behalf of Owner all taxes, charges, assessments, or levies imposed upon or against the Cars other than taxes, charges, assessments or levies payable by and chargeable to any lessee, or which are measured by Owner's income, of whatever kind or nature.
- (g) Maintain or have maintained separate, complete and accurate books and records of transactions of maintenance, mileage and movement relating to the Cars in the same form and to the same extent as customary in the Manager's railcar leasing and management bus-

iness, and retain such books and records for a period of no less than three (3) years and such books and records shall remain available for inspection by Owner or any of Owner's representatives, upon forty-eight (48) hours written notice, during reasonable business hours, and allow Owner to make photocopies thereof at Owner's expense.

- (h) Upon end of Term with respect to any and all Cars, Manager will promptly cause those Cars which are the subject of such termination to be returned to the location and in the manner designated by Owner all at Owner's expense. Manager shall use its best efforts to accomplish any such return on an income generating basis and as promptly as requested by Owner and will inform Owner of the basis on which the cars are proposed to be returned. However, if Manager is not reasonably able to accomplish such a return within the time period specified by Owner on an income generating basis, that return shall be accomplished with Manager using its best efforts to minimize transportation costs for Owner.
- (i) Collect in trust for Owner, or have lessees or users collect, all sums due Owner, including, without limitation, insurance benefits or railroad indemnity payments, in the event of damage to, or loss or total destruction of, a Car during the term of this Agreement and account for and promptly remit those sums. If, in order to collect sums due Owner, Manager and Owner deem it necessary to retain the services of outside counsel or other experts, (each of whom must be acceptable to Owner,) the expenses of such counsel or other experts shall be borne, 20% by Manager and 80% by Owner.
- (j) None of the Cars shall be placed in service outside the United States of America for more than 45% of any one calendar year period, except in international service.
- (k) In the event that Owner is a party to any legal action arising out of its Ownership of the Cars, Manager will promptly provide Owner with written notice of such action.
- (l) Request Owner's consent prior to exercising any right to terminate any lease.
- (m) If any Car which is the subject of this Agreement remains unused during the term of this Agreement and is stored on the tracks of a railroad owned by the Manager, it will be stored at no cost to Owner. Owner's consent is required for any paid storage.
- (n) The Cars will be insured under Manager's insurance policies at coverage equal to cars of similar type managed or leased by Manager. Manager shall maintain public liability insurance against bodily injury and third party property damage with regard to the Cars and its use and operation. The cost of this insurance will be paid by Owner as requested by Manager.
- (o) Manager will use its best efforts to manage the Cars on an equal basis (as measured by revenue) at least equal to that of any similarly designed cars with Manager's marks.



5. Payments

Within 10 days after the end of each calendar month, Manager shall remit to Owner all sums it has received and to which Owner is entitled pursuant to this Agreement, with only the costs, expenses and fees discussed in this Agreement which are actually paid by Manager, subtracted from same. All penalty reclaims or double reclaims which are incurred by the Cars and caused by the Manager or its affiliates shall not be deducted from the sums to which Owner is entitled to receive and shall be paid by Manager. Until so remitted to Owner all such monies received by Manager will be held as trustee for Owner, until final payment thereof is made to Owner in accordance with this Management Agreement.

6. Fee to Manager

The Manager shall be entitled to the following fee ("Management Fee"):

- (a) Manager shall receive a Management Fee based on Gross Revenue net of all per diem reclaims ("Net Revenue") collected and received for utilization of the Cars during the term of this Agreement.
- (b) On that portion of Net Revenue which is less than \$500 per car per month, the Management Fee will be 20% of Net Revenue collected.
- (c) On that portion of the Net Revenue of the Cars which exceeds \$500 per car per month during the term of this Agreement, Manager shall receive 40% of Net Revenue collected.
- (d) Manager will subtract the Management Fee from Net Revenue before remitting any funds to Owner.
- (e) Manager will submit to Owner each month the calculations upon which the Management Fee was determined and upon Owner's reasonable request will forward to Owner copies of any documents used in making the calculations.

7. Subordination

This Agreement and Manager's authority and rights hereunder are subject to the lien and security interest of each and every Lender to Owner secured by the Cars.

8. Reports

Manager shall monitor and record fleet allocation of the Cars under Manager's normal procedures.

Manager shall, within 90 days following the end of each calendar quarter during the term of this Agreement, submit to Owner a written report of the activity of the Cars. This report will summarize for the Cars for such service quarter (i) amounts earned and the amounts paid for the use

of the Cars; (ii) the nature of the amounts earned and the amounts paid for the use of the Cars, i.e., whether such amounts represent mileage charges, per diem charges or some other source of revenue; (iii) amounts outstanding from prior months; (iv) operating expenses; (v) management fees; and (vi) amounts remitted to Owner or payable to Manager pursuant to this Agreement.

Manager shall, within 90 days following the end of each calendar year during the term of this Agreement, submit a statement to Owner signed by an officer of Manager (i) setting forth as of that calendar year end the amount, description and numbers of all Cars then subject to this Agreement; the amount, description and numbers of all Cars that have suffered a casualty occurrence during the preceding calendar year and are then undergoing major repairs (other than running repairs); (ii) stating that, in the case of all Cars repaired or repainted during the period covered by such statement, and to the best of Manager's knowledge, the proper number and markings have been preserved or replaced; (iii) certifying that all amounts to be remitted hereunder by Manager to Owner through the preceding December 31 have been remitted, or if any have not been remitted, identifying such unremitted amounts and the reason for their nonremittance; (iv) stating that to the best of Manager's knowledge after reasonable inquiry, Owner is in compliance with all of the provisions of this Agreement and that all amounts required to be paid by Owner have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment; and (v) stating that to the best of Manager's knowledge the Cars have been operated in compliance with the requirements of all regulatory authorities having jurisdiction over the Cars.

Manager shall notify Owner within 5 business days after becoming aware of the occurrence of any major casualty which would cause any Car to be taken out of service for over 90 days.

9. Events of Default

- (a) The occurrence of any of the following events shall be an event of default:
  - (i) The non-payment or failure to remit, by Owner or Manager to the other of a total amount in excess of \$100 required herein to be paid or remitted within 10 days after any such payment or remittance is due. Notwithstanding the foregoing, the non-payment or non-remittance of such sum shall not relieve either party of the obligation to pay or remit any amounts then accrued hereunder.
  - (ii) The breach or non-fulfillment by Manager or Owner of any other term, covenant or condition of this Agreement, which is not cured within 10 days after written notification to the offending party of such breach or non-fulfillment.

- (iii) Any act of insolvency by Manager or the filing by Manager of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.
- (iv) The filing of any involuntary petition under any bankruptcy reorganization, insolvency or moratorium law against Manager that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Manager unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.
- (b) Upon the occurrence of any event of default by a party hereunder, the other party may, at its option, terminate this Agreement by delivering to the defaulting party written notice of such termination and may, in addition, pursue any other remedy available at law or in equity.

#### 10. Notices

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office in the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to Manager: Northbrook Corporation  
2215 Sanders Road/Suite 370  
Northbrook, Illinois 60062

Attention: President

If to Owner: Crocker Equipment Leasing, Inc.  
111 Sutter Street (22)  
San Francisco, California 94104

Attention: Commercial and Industrial Group

and any party may change such address by notice given to the other party in the manner set forth above.

#### 11. Miscellaneous

- (a) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and Manager and Owner hereby consent to the jurisdiction of the courts of the State of Illinois.
- (b) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

- (c) Headings. Titles and headings of the Sections and Subsections of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.
- (d) Amendment. No modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.
- (e) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, strikes, fires, storms or public disturbances.
- (f) No Partnership. It is not the purpose or intention of this Agreement to create a joint venture or partnership relation between the parties and nothing herein shall create or be construed to create such a joint venture or partnership. Except as set forth herein, Manager shall have no authority to bind Owner or incur any liability for which Owner may be responsible without the prior written consent of Owner.
- (g) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.
- (h) Notwithstanding any termination provision herein, if any Cars are placed in service which go beyond the termination of this Agreement, those particular Cars shall remain under the terms of this Agreement until they are returned by the user or lessee.

## 12. Indemnification

Owner shall defend (if such defense is tendered to Owner), indemnify and hold Manager and its railroad subsidiaries harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees and reasonable cost of investigation) losses or liabilities incurred by or asserted against Manager or its railroad subsidiaries as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars including, claims for injury to or death of persons, loss of or damage to property (including the Cars) and economic loss due to the unavailability for use of the Cars; provided, however, that Owner shall not defend, indemnify or hold Manager harmless from and against; and Manager or its railroad subsidiaries shall not be exculpated from, any claim, action, damage, expense, loss or liability caused by or arising from the negligence, bad faith, recklessness, or willful misconduct of Manager.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth above.

ATTEST:

CROCKER EQUIPMENT LEASING, INC.  
"Owner"

*[Signature]*  
Assistant Secretary Vice President

By: *[Signature]*  
President Assistant Treasurer

(CORPORATE SEAL)

ATTEST:

NORTHBROOK CORPORATION  
"Manager"

*Dennis T. Hurst*  
Secretary

By: *[Signature]*  
President

(CORPORATE SEAL)

Exhibit A

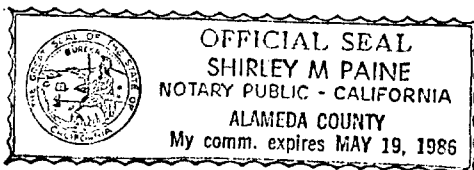
Quantity	Description	Reporting Marks
100	100-Ton Gondola Railroad Cars	WSOR & TSBY (Car numbers as follows)
WSOR 5630		WSOR 5773
WSOR 5631		WSOR 5775
WSOR 5633		WSOR 5779
WSOR 5635		WSOR 5783 through WSOR 5786
WSOR 5636		WSOR 5790
WSOR 5640		WSOR 5791
WSOR 5642		WSOR 5794
WSOR 5644		WSOR 5797
WSOR 5647		WSOR 5799
WSOR 5649 through WSOR 5651		WSOR 5802 through WSOR 5804
WSOR 5653		WSOR 5806
WSOR 5655		WSOR 5810
WSOR 5659 through WSOR 5662		WSOR 5813
WSOR 5673		WSOR 5816
WSOR 5674		WSOR 5818
WSOR 5676 through WSOR 5678		WSOR 5826
WSOR 5681		WSOR 5829
WSOR 5684 through WSOR 5686		
WSOR 5688		TSBY 5643
WSOR 5691		TSBY 5665 through TSBY 5667
WSOR 5696		TSBY 5671
WSOR 5698		TSBY 5679
WSOR 5701		TSBY 5683
WSOR 5703		TSBY 5697
WSOR 5706		TSBY 5702
WSOR 5710		TSBY 5714
WSOR 5715		TSBY 5730
WSOR 5719		TSBY 5745
WSOR 5725 through WSOR 5727		TSBY 5748
WSOR 5729		TSBY 5751 through TSBY 5752
WSOR 5731		TSBY 5756
WSOR 5732		TSBY 5765
WSOR 5734		TSBY 5767
WSOR 5743		TSBY 5788
WSOR 5744		TSBY 5809
WSOR 5747		TSBY 5819
WSOR 5753		TSBY 5821
WSOR 5757		TSBY 5824
WSOR 5759 through WSOR 5761		TSBY 5825
WSOR 5763		
WSOR 5766		

STATE OF California )  
 )  
COUNTY OF San Francisco )

SS.

On this 7<sup>th</sup> day of June, 1985, before me personally appeared Michael B. Sullivan, to me personally known who, being by me duly sworn, says that he/she is an authorized officer of Crocker Equipment Leasing, Inc., that said instrument was signed and executed on behalf of said corporation by authority of its Board of Directors and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public



(Notarial Seal)

My commission expires:

05-19-86

STATE Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 21<sup>st</sup> day of May, 1985, before me personally appeared James B. Shein, to me personally known, who, being by me duly sworn, says that he/she is President of Northbrook Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carmen Montagano  
Notary Public

(Notarial Seal)

My commission expires:

My Commission Expires October 20, 1988

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